

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

OSWALDO. C.,

Claimant,

OAH No. 2011060203

vs.

SOUTH CENTRAL LOS ANGELES
REGIONAL CENTER

Service Agency.

DECISION

Administrative Law Judge Sophie Agopian, State of California, Office of Administrative Hearings, heard this matter in Los Angeles, California on August 12, 2011. On January 19 and 20, 2012, status conferences were held in this matter. During the status conferences, Presiding Administrative Law Judge Susan L. Formaker notified the parties that Administrative Law Judge Agopian has been on a leave of absence.

On January 31, 2012, the parties stipulated that an alternative Administrative Law Judge from the Office of Administrative Hearings may write and issue a Decision in this matter, using the record of the Fair Hearing, consisting of an audio recording, Administrative Law Judge Agopian's notes, and the exhibits in possession of the Office of Administrative Hearings. The parties also waived any objections to the limitations in the record arising out of the alternative Administrative Law Judge's not having been present at the hearing.

On March 9, 2012, the matter was assigned to Administrative Law Judge Linda A. Cabatic.

Claimant Oswaldo C. was represented by his mother, Diana P.

Johanna Arias-Bhartia, Fair Hearing Coordinator, represented service agency South Central Los Angeles Regional Center (SCLARC).

Evidence was received, and the matter was submitted for decision on August 12, 2011.

ISSUE

Is SCLARC required to grant Claimant's request for ten (10) hours per week of In Home Behavior Intervention Services?

FACTUAL FINDINGS

1. At the time of the hearing, claimant was a six-year-old boy diagnosed with moderate mental retardation and autism. He resides with his mother and three-year-old brother.

2. According to the Review of the Individual Program Plan (IPP), dated January 5, 2010, and claimant's mother, in addition to hygiene issues, claimant does not appropriately participate in family outings, social and recreational activities. He does not participate in community integration through city parks and recreations because he does not know how to follow instructions. She also reported that he does not know how to appropriately play with other children his age, he does not know how to participate in a piñata, cutting of a cake, or playing soccer with other kids. Claimant's mother advised that claimant's disruptive behavior interferes with social participation almost every day. He reportedly does not go out with his mother to community outings at least five times a week. He likes to watch television at home, but his time is limited.

3. Claimant's mother receives 16 hours per month of in-home respite provided through Premier, and funded by SCLARC.

4. On March 31, 2011, SCLARC sent Claimant's mother its Notice of Proposed Action (NOPA) denying her request for in-home behavior intervention services. The NOPA noted that Claimant's mother described Claimant's problems as tantrums (about three or four times a day), "getting on top of children's heads," hugging, aggression, possibly self-abusive behavior, and wandering away if left unsupervised. She reported that the claimant endangers himself but the injuries do not require first aid. Claimant is already receiving Applied Behavioral Analysis (ABA) services at school through Compton Unified School District.

5. The NOPA stated:

"A referral from previous Service Coordinator was received in May 2009; based on the reported severity of behaviors at that time, behavior management classes were recommended, rather than in-home intervention. The parent then refused to participate in the classes as an alternative to in-home intervention. The parent stated

to the service coordinator at that time that she did not want to receive instruction in behavior management but wanted a service which involved her son but not her.

Since behavior modification must involve the primary caretaker to implement behavioral techniques, in-house intervention was no longer considered at that time. Similarly, Claimant's mother indicated that she does not wish to attend a behavior management class and that she does not intend to implement recommended behavioral techniques if she were to receive in-home intervention, as specified in the regional center's letter to parents regarding that intervention.

Lanterman Act section 4685 (c)(3), as amended by the 2009 Trailer Bill AB 9, states that regional centers may utilize "group training for parents on behavioral intervention techniques in lieu of some or all of the in-home parent training component of behavioral intervention services." Section 4686.2(b) states that regional centers shall "only purchase ABA or intensive behavioral intervention services when the parent or parents of minor consumers receiving services participate in the intervention plan, given the critical nature of parent participation to the success of the intervention plan." It appears that the mother of [Claimant] is not willing to fully participate in any in-home intervention. If she is willing to participate in behavior management classes, that service continues to be offered. In-home intervention is not recommended, since she has expressed unwillingness to fulfill the parental requirement under the Lanterman Act for that service."

6. On or about May 3, 2011, Claimant's mother filed her fair hearing request, requesting 10 hours of In-Home Behavior Support for Claimant.

7. Theresa Rodriguez, Claimant's Service Coordinator since December 2009, testified that Claimant's mother's request for services was denied. The protocol for SCLARC was to have the parents attend behavior classes and then an assessment would be made to see whether the techniques learned in the behavior classes were working. Only if the assessment revealed that the behavior modifications implemented by the parents were not working, would SCLARC provide in-home behavior support services. She explained this process to Claimant's mother and Claimant's mother did not want to attend the classes.

8. Bruce Williams, PhD., reviews in-home intervention requests for SCLARC. The complete file is sent to him for review and he reviews the frequency and severity of behaviors and determines whether in-home intervention is warranted. Dr. Williams explained that for in-home intervention services, an assessment is made by a behavioral vendor with the goal of reducing the problems at home. The assessment is done in two visits and then a report is produced by the vendor with a recommendation for treatment and the number of hours for the parent. He reviews the assessment report and then makes a recommendation. After a period of three months, a progress report is issued to determine whether the parent has mastered the techniques and can take over. If the problems indicate the need, they will consider in-home services.

Dr. Williams reviewed the documents submitted by Claimant's mother and determined the information was insufficient to warrant in-home intervention. Dr. Williams needed more information about the severity of the problem behaviors at home. All he knew was that Claimant had tantrums two or three times a week, was aggressive twice a day and flopped twice a day. Dr. Williams explained that based upon prior and current information, it was his understanding the parent was not interested in training and just wanted the services. Dr. Williams thought that Claimant could benefit from after school programs, particularly one designed for autism or social skills training. The parent takes the child to these programs and places the child with other children for social interaction.

9. Claimant's mother testified that Claimant receives 30 hours of an intensive program in the school, but the problem she has with Claimant is outside of school. She believes Dr. Williams should have reviewed the functional analysis assessment report because it is more relevant to the behavior management issue, but she did not provide that report and feels Dr. Williams should have requested it.

Claimant's mother testified that Claimant receives 30 hours of intensive program service at school and has a 1:1 assistance at school at all times to help him, in addition to another aide. She also stated that at the IEP meeting the Director from Autism Spectrum Therapies (AST) recommended that she have 10 hours at home to assist Claimant with his social skills training, but because of budget problems the school could not fund this service outside of the school.

Claimant's mother stated that she refused the training because it was a waste of her time. She has already been to training and is receiving services, but she needs the services for Claimant's interactions in the community. She refused to participate in the training courses because SCLARC said it was not going to help her without the training.

Claimant received one month of Discrete Trial Training (DTT) training, which addresses skills behaviors, at the University of California, Los Angeles three times a week.

10. Claimant's mother testified that she participated in the PAM Program, which is a program designed for parent mentors. It is a program designed to teach parents early identification signs, participate in meetings, and become an advocate. She also participated in a 20-hour program designed for parent advocacy and 1.2 hours of training in ABA.

11. Claimant's mother stated that if the parent training was geared towards behavior in the community, she would participate in the training. The training Claimant's mother has received is different from the training SCLARC would provide. The SCLARC representative stated the workshops provided by the regional center caters to specific requests. If the problem is community interactions, the trainers can provide specific tips for dealing with behavior in the community and how to collect data for specific issues, as well as how to implement techniques to deal with these behaviors. The training provided by SCLARC has nothing to do with advocacy or assessments. Claimant's mother stated she has collected data with respect to community behavior but has not provided it to SCLARC .

LEGAL CONCLUSIONS

1. The Lanterman Act, found at Welfare and Institutions Code section 4500 et seq., sets forth the regional center's responsibility for providing services to persons with developmental disabilities. An "array of services and supports should be established. . . to meet the needs and choices of each person with developmental disabilities. . . to support their integration into the mainstream life of the community. . . and to prevent dislocation of persons with developmental disabilities from their home communities." (Welf. & Inst. Code, § 4500.)

2. Welfare and Institutions Code section 4685, subdivision (c)(3) provides:

(c) In order to provide opportunities for children to live with their families, the following procedures shall be adopted:

(3) (A) To ensure that these services and supports are provided in the most cost-effective and beneficial manner, regional centers may utilize innovative service-delivery mechanisms, including, but not limited to, vouchers; alternative respite options such as foster families, vacant community facility beds, crisis child care facilities; *group training for parents on behavioral intervention techniques in lieu of some or all of the in-home parent training component of the behavioral intervention services*; purchase of neighborhood preschool services and needed qualified personnel in lieu of infant development programs; and alternative child care options such as supplemental support to generic child care facilities and parent child care cooperatives.

(B) Effective July 1, 2009, at the time of development, review, or modification of a child's individualized family service plan or individual program plan, the regional center shall consider both of the following:

(i) The use of group training for parents on behavioral intervention techniques in lieu of some or all of the in-home parent training component of the behavioral intervention services.

(ii) The purchase of neighborhood preschool services and needed qualified personnel in lieu of infant development programs.

(Italics added.)

3. Welfare and Institutions Code section 4686.2, in pertinent part provides:

(a) Effective July 1, 2009, notwithstanding any other

provision of law or regulation to the contrary, any vendor who provides applied behavioral analysis (ABA) services, or intensive behavioral intervention services or both, as defined in subdivision (d), shall:

(1) Conduct a behavioral assessment of each consumer to whom the vendor provides these services.

(2) Design an intervention plan that shall include the service type, number of hours and parent participation needed to achieve the consumer's goals and objectives, as set forth in the consumer's individual program plan (IPP) or individualized family service plan (IFSP). The intervention plan shall also set forth the frequency at which the consumer's progress shall be evaluated and reported.

(3) Provide a copy of the intervention plan to the regional center for review and consideration by the planning team members.

(b) Effective July 1, 2009, notwithstanding any other provision of law or regulation to the contrary, regional centers shall:

(1) Only purchase ABA services or intensive behavioral intervention services that reflect evidence-based practices, promote positive social behaviors, and ameliorate behaviors that interfere with learning and social interactions.

(2) Only purchase ABA or intensive behavioral intervention services when the parent or parents of minor consumers receiving services participate in the intervention plan for the consumers, given the critical nature of parent participation to the success of the intervention plan.

(3) Not purchase either ABA or intensive behavioral intervention services for purposes of providing respite, day care, or school services.

(4) Discontinue purchasing ABA or intensive behavioral intervention services for a consumer when the consumer's treatment goals and objectives, as described under subdivision (a), are achieved. ABA or intensive behavioral intervention services shall not be discontinued until the goals and objectives are reviewed and updated as required in paragraph (5) and shall be discontinued only if those updated treatment goals and objectives do not require ABA or intensive behavioral intervention services.

(5) For each consumer, evaluate the vendor's intervention plan and number of service hours for ABA or intensive behavioral intervention no less than every six months, consistent with evidence-based practices. If necessary, the intervention plan's treatment goals and objectives shall be updated and revised.

(6) Not reimburse a parent for participating in a behavioral services treatment program.

(Italics added.)

4. Claimant's mother requested In-Home Behavior Intervention services but refused to participate in any of the training. (Findings 4, 5, 6, and 9.) Claimant's mother claims she has already been trained, but her training relates more to parent advocacy rather than behavioral intervention. (Findings 9, 10 and 11.) The training offered by SCLARC is not advocacy training. (Findings 7 and 11.) Claimant's mother also stated she would participate in the training if it related to behavior in the community. (Finding 11.)

5. Since the pertinent provisions of the Welfare and Institutions Code require parent participation in behavioral intervention techniques and since Claimant's mother refused to participate in training relating to in-home behavioral intervention techniques, cause exists to deny Claimant's mother's appeal. (Finding 11; Legal Conclusions 2 and 3.)

ORDER

The appeal filed by Claimant's mother is DENIED.

Dated: _____

LINDA A. CABATIC
Administrative Law Judge
Office of Administrative Hearings

NOTICE

This is the final administrative decision in this matter. Each party is bound by this decision. An appeal from the decision must be made to a court of competent jurisdiction within 90 days of receipt of the decision. (Welf. & Inst. Code, § 4712.5, subd. (a).)